the ground that such poles have no (or almost no) usable space.[28] As other pole owners, including other electric utilities, have demonstrated, 30 foot -- and even shorter -- poles can be and "are used for attachments by multiple parties." GTE at 13 ("a thirty foot telecommunications pole with the presumptive 6 feet below ground and 18 feet of ground clearance would still have six feet of usable space, thus permitting multiple attachments"). See also SWBT at 38 (even "a 25-foot pole with 18 feet of ground clearance and 5 feet underground would have about 2 feet of space available above the lowest attachment").[29] Indeed, as many as 50% of the poles in use by some pole owners measure 30 feet or less. See, e.g., GTE at 14.[30] And the electric utilities' proposals for a separate "short pole" formula ignore that: (1) the rate formula's usable space presumptions reflect averages of short and tall poles, and thus separate treatment of short poles would necessitate increasing the usable space presumption in the existing formula to reflect the

[28] See Electric Utilities II at 46; Electric Utilities I at 29.

[29] See also Ameritech at 4 (30 foot poles "can create 6' or more of usable space for attachment"); Sprint at 5 ("telecommunications carriers may have many poles that are only 30 feet and these poles adequately accommodate telecommunications facilities and cable facilities"); NCTA at 15 ("in areas of the country as diverse as New York and Texas, cable operators are still attached to significant numbers of 30' poles"); Bell Atlantic/NYNEX at 10 ("poles of 30 feet or less do provide sufficient usable space for multiple attachments"); USTA at 27 ("to the extent that electric utilities have chosen not to attach to such poles, such avoidance has been both conscious and volitional"); id. at 28 ("a thirty-foot pole has six feet of usable space"); Union Electric at 31 ("Multiple attachments can be made to service line poles of 30 feet or less (except for small service poles of 5 feet or less) and are made to such poles"); TCI at 12; Time Warner at 10.

[30] See also Sprint at 4-5 ("Sprint operating companies have a significant number of 35 and even 30 foot jointly used poles in the field for purposes of service drops, where attacher separation issues and road clearance compliance requirements are not a problem"); Bell Atlantic/NYNEX at n.21 ("more than 25% of NYNEX's total base of poles are 30 feet or less"); USTA at 27 ("LECs have invested substantially in deploying thirty-foot poles to accommodate their own needs and the needs of other attaching telecommunications service providers"); U S WEST at 4 ("approximately 13 percent of U S WEST Communications, Inc.'s poles are 30 feet or less in height").

absence of those short poles;[31] (2) pole owners generally "do[] not maintain records which would enable [them] to segregate. . .pole investment costs by pole height," Ohio Edison at 23,[32] and (3) even if theoretically feasible, "[a]ny proposal that would allow pole owners to extract 30' poles from the rate base would be an invitation to contention and complexity where none has existed in the past, and would inject delay, expense and uncertainty into every case in the pole rate setting process," NCTA at 18.[33]

C. Safety Space. The Commission has consistently rejected electric utility pleas to classify electrical safety space as "unusable,"[34] and the comments in this proceeding again confirm both that safety space is necessary only because of the presence of the electric utility and that safety space is usable (and, indeed, actually and increasingly used by the electric utilities or offered by them for use by others). The electric utilities urge here the same tired argument that the Commission has rejected time and again -- i.e., that safety space exists for the sole benefit of

---

[31] See, e.g., NCTA at 11 (if, as the electric utilities claim, poles today are typically 40 feet tall, then "the most expedient and accurate way to account for this change -- in a manner which conforms with FCC practice -- is for the Commission to adopt a rebuttable presumption that there exists 16 feet of usable space on electric utility poles").

[32] See also Duquesne at 28.

[33] See also SWBT at 39 ("some type of study or assumptions would be required to estimate the investment associated with the shorter poles. This adjustment to the investment would complicate unduly the calculation of the gross or net cost of a bare pole"); GTE at 13 ("it is not a simple matter for GTE to cull out poles that are 30 feet and less in height from its voluminous pole database. GTE does not routinely track and report poles based on height, and generating such calculations would be administratively burdensome and ultimately of little value to the Commission or pole attaching parties").

[34] See, e.g., NCTA at 12 ("The utilities' claim that the neutral zone is unusable has been rejected, time and again"); Opinion and Order, Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144 ¶ 10 (released March 10, 1980).

attachers. To the contrary, as many state Commissions have repeatedly held, "it is the electric utility's equipment that necessitates creation of the safety space and it is the electric utility's responsibility to comply with that provision of the NESC."[35] In this regard, history refutes the electric utilities' claims that but for attachers they would have installed shorter poles, see Electric Utilities I at 35 -- electric poles generally were installed first with attachments coming much later and only after great resistance from these utilities.

In any event, it cannot seriously be disputed that safety space is actually usable and used. Ironically, the best support for this statement comes from the electric utilities themselves. For example, Ohio Edison (at 19) admits that it places fiber optic cable in this region, Union Electric (at 28) discusses the transformer cases and capacitor racks it locates there, and Electric Utilities I (at 38-39) refer to the placement of "streetlights[,]" "power supplies," "repeaters and amplifiers," "supporting guy attachments" and "splitter boxes" in the safety space. Many of these uses provide significant revenue opportunities for the electric utilities. In short, there is no conceivable legitimate basis for the Commission to abandon its long-standing treatment of electric safety space as usable space.[36]

---

[35] Bell Atlantic/NYNEX at 9. See also In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095, "Opinion and Order Setting Pole Attachment Rates," at 14-15 (New York PSC, June 17, 1997); Order, Re Pole Attachments by Cable Television Televisions Systems, 80-0249 (Ill. Commerce Comm'n, Dec. 23, 1993), aff'd Central Illinois Pub. Serv. Co. v Illinois Commerce Comm'n, 644 N.E.2d 817 (Ill. Dec. 1994).

[36] See also U S WEST at 4-5; Time Warner 15 -17; NCTA at 14 ("The neutral zone can be, and is, used for street light attachments, from which electric utilities derive additional revenues") (citing Consumers Power Co., et al., Mich. Pub. Serv. Case Nos. U-10741, U-10816, U-10831, Tr. 409 (Feb. 11, 1997) (Cross examination of Glenn R. Spence, Detroit Edison outside plant engineering witness); Tr. 520 (Cross examination of John A. Zagancyk, Wisconsin Electric Power witness)); NCTA at 13 ("Pole space used by a power company to maintain prescribed clearances among conductors is 'used' by the power company for the unique attribute of ***its*** core services").

D. Minimum Clearance. The Whitepaper sponsors urged the Commission significantly to reduce the rate formula's usable space presumption in recognition of NESC "minimum clearance" guidelines of 18 feet of ground clearance, which, they claimed, required the lowest attachment to be at least 19.8 feet above the ground to account for approximately 20 inches of average line sag. See "Just and Reasonable Rates and Charges For Pole Attachments: The Utility Perspective," A Position Paper Presented By: American Electric Power Service Corp., Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Florida Power & Light Company, Northern States Power Company, The Southern Company, and Washington Water Power Company (filed Aug. 28, 1996). The comments conclusively demonstrate that the Whitepaper sponsors misrepresented the NESC requirements. As one electric utility explains: "[t]he NESC generally requires a minimum clearance of 15 feet 6 inches" for communications cables, not 18 feet. Ohio Edison at n.7.[37] Recognizing as much, several electric utilities here attempt to reach the same untenable result by increasing their average line sag estimates by 150% from the 20 inches claimed in the Whitepaper to 50 inches. See Electric Utilities II at n.117. But these new line sag claims are equally misleading. Taking the NESC 15 feet 6 inch minimum clearance guideline at face value, the Commission's existing clearance presumption of 18 feet allows for an average of 30 inches of line sag.[38] Even when a 13 Kilovolt power line lies immediately above the communications cable, the communications cable would

[37] See also Ameritech at 3; NESC at 78-79 (this figure may even fall to 15 feet).

[38] In fact, the difference in mid-span ground clearance for electric cables and communication cables (30 inches) corresponds to the safety space on the pole (40 inches) because separation at mid-span only needs to be 75% of the separation on the pole. Thus, the 15.5 foot clearance for communications attachments follows directly from the 18 foot clearance required for electric attachments.

have approximately 32 inches of sag at the mid-span of a 150 foot span, one of the most common span lengths in urban heavily loaded areas. And at this span length, coaxial, fiber optic, and telecommunications cable will typically sag much less under normal conditions. There would, of course, be spans that experience more sag, but the rate formula's presumptions reflect averages, not, as the electric utilities would have it, maximums or worst-case scenarios. Finally, the electric utilities again ignore that the NESC clearance requirements apply primarily to road crossings and that there are many areas in which much lower minimum clearances apply. "If anything," then, the current 18 foot presumption is "conservative." Time Warner at 14.[39] And, as one electric utility notes, "[t]o the extent that any Whitepaper sponsors believe that the weighted average of its poles presents a result significantly different from the 13.5 foot presumption, it may present that result to the Commission for use in its attachment rate." ConEd at 14.[40]

VI. THERE IS WIDESPREAD CONSENSUS THAT THE ELECTRIC UTILITIES' PROPOSED ADDITIONS TO THE ACCOUNTS INCLUDED IN THE RATE FORMULA CONSTITUTE OVERREACHING AND WOULD PRODUCE OVERRECOVERY.

In its initial comments, AT&T (at 20) supported the Commission's proposals to map accounts from Part 31 to Part 32. As NCTA (at 26) notes, however, a "one-to-one mapping"

---

[39] TCI at 13.

[40] With respect to pole owners' arguments that the Commission should use a presumptive 11.25% rate of return when the state no longer makes a determination regarding the pole or conduit owner's cost of capital, AT&T notes that capital costs for many telecommunications utilities have recently been determined in state arbitrations around the country and that these rates should be used whenever they are available. Further, AT&T has submitted current estimates of utility rates of return. See Bradford Cornell, "Estimating the Cost of Capital of Local Telephone Companies for the Provision of Network Elements," (filed as an attachment to AT&T's Ex Parte Presentation -- Proxy Cost Model Questions in CC Docket No. 96-45, February 12, 1997).

cannot occur.[41] The effect of this imperfect correspondence is to overcompensate pole owners through higher rates.[42] Nevertheless, AT&T recognizes the difficulties the Commission faces in making the transition from Part 31 to Part 32 and continues to support its efforts in this context.

AT&T strongly opposes, however, the electric utilities' obvious ploy to vastly magnify current rates by including a myriad of new FERC accounts. Among the various comments submitted by the electric utilities in this proceeding, the Commission has been asked to include:

FERC Account 360 (Land and Land Rights),

FERC Account 365 (Overhead Conductors and Devices),

FERC Account 366 (Underground Conduit),

FERC Accounts 367 (Underground Conductors and Devices),

FERC Account 368 (Line Transformers),

FERC Account 369 (Services),

FERC Account 397 (Communication equipment),

FERC Account 580 (Operation Supervision and Engineering),

FERC Account 583 (Overhead Line Expenses),

FERC Account 584 (Underground Line Expenses),

FERC Account 588 (Miscellaneous Distribution Expenses),

FERC Account 590 (Maintenance Supervision and Engineering),

FERC Account 593 (Maintenance of Overhead Lines),

FERC Account 594 (Maintenance of Underground Lines),

[41] See also Time Warner at 25.

[42] Patricia Kravtin provides a detailed examination of how the Commission's proposals will overcompensate pole owners in her declaration submitted with NCTA's comments.

FERC Account 594.1 (Maintenance of lines (Nonmajor only)),

FERC Account 595 (Maintenance of line transformers), and

FERC Account 598 (Miscellaneous Distribution Expenses)

in its pole or conduit rate formulas.[43] With the exception of those accounts already identified for inclusion by the Commission, these accounts should not be included.[44] Many are unrelated to poles or conduit.[45] No part of accounts 365, 367 or 368 should be included in the formula. Grounding and lightning arrestor costs for electrics, for example, are included in accounts 365, 367 and 368 and not pole account 364. For communications plant similar equipment is booked to the cable and wire accounts, not to the pole account. This continues to be appropriate as the issue has been addressed many times over the years and has been resolved as many times, as pointed out by NCTA (at 20). That it should arise again here is merely another attempt to complicate the pole attachment formula when, most simplistically, no case can be made that the poles themselves must be grounded; rather, it is the cables, conductors and other electrical devices which must be grounded to ensure proper protection.

---

[43] See generally Electric Utilities I at 45-60; Electric Utilities II at 62-68; Consolidated Edison at 11-12; Ohio Edison at 27-31; Duquesne Light at 30-32; Union Electric at 34.

[44] One of the most notable deficiencies in the electric utilities' arguments for the inclusion of additional accounts is their failure to demonstrate that these expenses are not already recovered through make-ready charges.

[45] Account 360 includes costs for land and land rights for all distribution assets, including station equipment (switching equipment, transformer banks, *et. al.*), storage battery equipment, overhead and underground conductors and devices, and underground conduit.

As for initial tree trimming, Part 32 classifies this expense with the pole account, while the FERC classifies it with Account 365, overhead conductors and devices. These superficially disparate treatments are not inconsistent given the fundamental differences in cost causation between the two industries. Initial tree trimming costs for electrics are extensive by any comparison with that required for communications plant. Because relatively high voltage, bare wire conductors are used generally in electric distribution plant, prudence and safety require extensive tree trimming to maintain the integrity of the electric system. In contrast, communications cables and wires are at relatively low voltages, and are protected by outer sheaths and insulation around the individual metallic conductors. Thus, tree trimming for communications plant installations is associated mainly with the placement of the poles, not with the area between poles over which the cables will hang. The different plant accounting rules are fully appropriate, and a proposal to include 20-30% of Account 365 in the pole attachment rate is patently unnecessary.

Some electric utilities propose to include portions of the Services (drop wires) and Communications Equipment accounts in the formula, but advance no support. Clearly, as applied to poles, any portion of the Services and Communications Equipment accounts is incidental in nature and should not be included. All the operational and expense account proposals have similar deficiencies and the minimal evidence introduced in this proceeding is wholly inadequate to justify adding them to the Commission's formula.

The inappropriateness of including these accounts is further underscored by the electric utilities' inability to agree as to what percentage of these accounts should be included. For example, with respect to FERC Account 365, Electric Utilities I (at 47) urge 20%, Electric

Utilities II (at 61) suggest 11%, and Union Electric (at 32-34) says that it does not have enough information to even recommend a percentage. Indeed, the only statement that can be made with any clarity about the inclusion of these accounts is that it would unnecessarily increase rates, increase the complexity of the Commission's formula, and allow pole owners to double recover for expenses they may have already collected through make-ready and inspection charges.[46]

VII. THE COMMISSION SHOULD ADOPT A ONE-THIRD-DUCT APPROACH TO CONDUIT PRICING.

Conduit owners cite "spare duct" requirements (Ohio Edison at 35), "emergency" and "maintenance" needs (Bell Atlantic/NYNEX at 13) and "franchise agreements and ordinances" (Ameritech at 7) in support of the proposed half-duct approach to conduit pricing. However, the comments submitted in this proceeding confirm that the utilities' arguments are "based on out-of-date engineering" (ALTS at 7) and information, and that a one-third duct approach more than accounts for reserved ducts to meet all of these requirements. Today, "[c]onduit runs may contain as many as 12 or more ducts, with each such duct subdivided still further by four-, five-, or even six-compartment innerduct." NCTA at 40.[47] Thus, even if utilities typically reserved a single inner-duct in each conduit for maintenance or emergency purposes -- and they do not (see

[46] The Commission's formula only produces a presumptive maximum rate. If an electric utility believes that this level is insufficient to meet the statutory standard, it is always free to rebut this presumption and demonstrate that a higher rate is necessary.

[47] See also ALTS at 7 ("With the deployment of fiber and the engineering of smaller innerducts the space available in the average duct has increased to at least three or four in the past several years and appears to continue to increase with time"); NCTA at Exhibit 16 (displaying "an advertisement from a leading manufacturer of inner-duct devices showing that certain of its products subdivide primary four-inch duct as small as two inches in diameter into as a (sic) many as 6 inner ducts"); id. at 42 ("as long ago as 1981, the Bell System provided for the placement of four-compartment innerduct in 3-1/2 square and 4 inch ducts").

AT&T at 23) -- three or more cables could still occupy the remaining conduit space in many instances.[48] In light of the historic inability of cable operators "to use the maintenance duct and municipal duct (where there is such a municipal set-aside) even in cases of emergency" (NCTA at 43) and the fact that the municipal set aside duct is often "put to commercial use" (id. at 43-44),[49] it is clear that AT&T's one-third-duct proposal is conservative,[50] and, indeed, that requests for a one-quarter-duct approach (see TCI at 16) are entirely reasonable.[51]

The electric utilities attempt to avoid this analysis altogether, claiming that their conduits can never be shared (and thus that a whole duct method should be used for their conduit). See, e.g., Electric Utilities II at 86. That is false -- indeed, the electric utilities themselves concede that communications cables, including communications cables owned by the electric utility itself, can and do share a single electric utility-owned duct. In those circumstances, the ownership of the duct is irrelevant, and a one-third duct approach is appropriate for the same reasons it is appropriate for a telecommunications company-owned duct. In fact, the electric utilities have overstated their case even with respect to ducts actually occupied by electric cables. Contrary, to the electric utilities' claims, the NESC does permit duct sharing between electric and telecommunications cables under certain circumstances. In particular, the NESC merely provides

---

[48] Moreover, if an inner-duct or conduit is reserved for maintenance purposes, any party subsequently occupying that space on a more permanent basis should be required to expand the conduit run's capacity in order to assure that the same amount of maintenance space remains available.

[49] See also Time Warner at 18 ("so called 'maintenance ducts'. . .should be considered usable").

[50] See also Time Warner at 18.

[51] See also NCTA at 42 ("the Commission should adopt a quarter-duct convention").

that "[s]upply, control, and communication cables shall not be installed in the same duct unless the cables are maintained or operated by the same utility." NESC at 186. Nothing in this language prevents a communications company from turning over operation of its cable to the electric utility or prevents the electric utility from installing its own communications cable in the same duct with its power cables.[52] The electric utilities complain that they might lease conduit space to a new entrant at the one-third-duct (or one-half-duct) rate, yet be unable to find any other party -- including itself -- that also wishes to use that duct. But the same is true of any other conduit owner -- the proposed formula properly bases charges on the space actually occupied by the leasing party. In short, the electric utilities will be treated exactly the same as other conduit owners when they allow other parties to occupy their conduit, and the same one-third duct rate formula is appropriate.

[52] See also Ameritech at 5 ("it may be possible that non-conducting fiber optic cables could share a duct with an electrical cable, presuming there is space to do so and access and safety provisions are met").

CONCLUSION

For the foregoing reasons, the Commission should: (1) continue to apply its existing pole attachment rate methodology without any of the self-serving adjustments proposed by pole owners; (2) ensure that pole and conduit owners collect nor more than the maximum permissible rate per unit of space, without imposing discriminatory charges for different attachment types; (3) reject attempts to exempt wireless attachments and transmission towers from rate regulation; and (4) adopt its proposed conduit formula using a "one-third duct" convention.

Respectfully submitted,

AT&T CORP.

Mark C. Rosenblum
Roy E. Hoffinger
Connie Forbes

Room 3245G1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-2631

David L. Lawson
Scott M. Bohannon

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8034

August 11, 1997

APPENDIX: LIST OF COMMENTERS

Commenter	Short Name
The Association for Local Telecommunications Services	"ALTS"
American Electric Power Service Company, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company, Northern States Power Company	"Electric Utilities II"
Ameritech Operating Companies	"Ameritech"
AT&T Corp.	"AT&T"
Bell Atlantic and NYNEX	"Bell Atlantic and NYNEX"
BellSouth Corporation	"BellSouth"
Consolidated Edison Company of New York, Inc.	"Consolidated Edison"
Duquesne Light Company	"Duquesne Light"
Edison Electric Institute and Edison Electric, the Telecommunications Association	"Edison Electric"
The Electric Utilities Coalition	"Electric Utilities I"
GTE Service Corporation	"GTE"
National Cable Television Association, Cable Telecommunications Association, Texas Cable & Telecommunications Association, Cable Television Association of Georgia, South Carolina Cable Television Association, Cable Television of Maryland, Delaware and the District of Columbia, Mississippi Cable Telecommunications Association, Mid-America Cable Telecommunications Association, Kansas Cable Telecommunications Association, Jones Intercable, Inc., Charter Communications, Greater Media, Inc., Prime Cable, Rifkin & Associates, TCA Cable TV, Inc., The Helicon Corporation	"NCTA"
Ohio Edison Company	"Ohio Edison"
Public Service Company of New Mexico	"PSCNM"
The Southern New England Telephone Company	"SNET"
Sprint Corporation	"Sprint"
SBC Communications Inc.	"SWBT"
Tele-Communications, Inc.	"TCI"

Commenter	Short Name
Time Warner Cable	"Time Warner"
Union Electric Company	"Union Electric"
United States Telephone Association	"USTA"
U S WEST, Inc.	"U S WEST"
WorldCom, Inc.	"WorldCom"

CERTIFICATE OF SERVICE

I, Thomas A. Blaser, do hereby certify that on this 11th day of August, 1997, I caused a copy of the foregoing Reply Comments of AT&T Corp. to be served upon each of the parties listed on the attached Service List by U.S. First Class mail, postage prepaid.

Thomas A. Blaser

SERVICE LIST

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

ITS, Inc.
Room 246
1919 M Street, NW
Washington, DC 20554

Emily M. Williams
Association for Local Telecommunications Services
1200 19th Street, NW
Washington, DC 20036

David L. Swanson
Edison Electric Institute
701 Pennsylvania Ave., NW
Washington, DC 20036

Jeffrey L. Sheldon
UTC
1140 Connecticut Ave., NW
Suite 1140
Washington, DC 20036

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

James D. Ellis
175 E. Houston, Room 1254
San Antonio, TX 78205

Mary McDermott
U.S. Telephone Association
1401 H. Street, NW, Suite 600
Washington, DC 20005

Betsy L. Anderson
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Paul Glist
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Ave., NW
Suite 200
Washington, DC 20006

Gerald A. Friederichs
30 S. Wacker Drive, 39th Floor
Chicago, IL 60606

Brian Conboy
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21 Street, NW
Washington, DC 20036

Shirley S. Fujimoto
McDermott, Will & Emery
1850 K. Street, NW
Washington, DC 20006

Ward W. Wueste
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Gardner F. Gillespie
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004

James T. Hannon
Suite 700
1020 19th Street, NW
Washington, DC 20036

M. Robert Sutherland
Suite 1700
1155 Peachtree Street, NE
Atlanta, GA 30309-3610

Diane C. Iglesias
Assistant Vice President - Regulatory Affairs
227 Church Street
New Haven, CT 06510

Catherine R. Sloan
Worldcom, Inc.
1120 Connecticut Ave., NW
Suite 400
Washington, DC 20036

Jay C. Keithley
1850 M. Street, N.W., Suite 1100
Washington, DC 20036

William J. Niehoff
Union Electric Company
1901 Chouteau Avenue
P.O. Box 66149 (M/C 1310)
St. Louis, Missoui 63166-6149

Paul A. Gaukler
Shaw Pittman Potts & Trowbridge
2300 N. Street, NW
Washington, DC 20037-1128

Martin F. Heslin
4 Irvin Place
New York, NY 10003